ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CACR 07-687

JANUARY 23, 2008

TOMMY L. ALLEN, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT, [NO. CR-04-653, CR-05-1396, CR-06-306, CR-06-506, CR-06-508]

HONORABLE J. MICHAEL FITZHUGH, JUDGE

AFFIRMED

Appellant Tommy L. Allen, Jr., appeals the revocation of his suspended sentences for multiple crimes, as found by the Sebastian County Circuit Court. Appellant had been released from prison and was serving the suspended portion of his sentences when the State filed a petition to revoke on the basis that he had committed an aggravated robbery within ten days of his release. After a hearing, the trial court found that the State proved by a preponderance of the evidence that this crime occurred and that appellant was guilty as a participant, in violation of his conditions of suspension. Appellant appeals, asserting that there is insufficient proof to sustain the revocation. We disagree and affirm.

In order to revoke the terms of a suspended sentence or probation, the State must prove that the defendant violated the conditions of his probation by a preponderance of the

evidence. *Carruthers v. State*, 59 Ark. App. 239, 240, 956 S.W.2d 201, 202 (1997). It is only necessary that the State prove a single violation. Whether this standard is met is determined by questions of credibility and the weight to be given to the testimony, and we defer to the trial court's superior position with regard to those issues. Thus, we will uphold the trial court's findings unless the findings are clearly against the preponderance of the evidence. *Jones v. State*, 52 Ark. App. 179, 182, 916 S.W.2d 766, 768 (1996).

The victim herein, Larry Jones, Jr., testified that late at night on December 29, 2006, he was attempting to enter the laundry facility at his apartment in Fort Smith when two men approached him seeking money or a ride. After Jones turned to walk away, he was attacked from behind, choked, beaten to unconsciousness, and his car and wallet were stolen. Appellant was observed operating the car and obtaining gasoline at a local gas station, but driving away without paying for the gasoline. This activity was captured on the station's video surveillance equipment. The vehicle was later found in an Oklahoma detail shop. Appellant was developed as a suspect, and he admitted to being at the apartment complex that night with the other man. Although appellant denied being the person who physically attacked the victim, he admittedly was with the other person, later determined to be Daniel Tyler Lawson. Appellant admitted to driving the car away. The victim positively identified appellant as one of the two men who approached him for money that night. In a statement given to police, Lawson admitted to being present at the apartment complex with appellant, but Lawson stated that appellant did the beating. On this evidence, the trial court found appellant to have violated his conditions of suspension.

Appellant argues that this case was presented only on circumstantial evidence, that the victim could not state that it was appellant who struck him, and that the officer was unable to state that the car in the gas station video was this stolen car or that appellant was the driver. These are not compelling arguments. On a preponderance standard, the State presented evidence from which the trial court could conclude that appellant was actively involved, if not the primary actor, in this aggravated robbery. Appellant's own statements to police demonstrated that he was admittedly at the apartment complex with the other man, was at least witness to the beating, and admittedly drove off in the stolen vehicle.

Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). Thus, the burden on the State is not as great in a revocation hearing. *Id.* We hold that appellant has failed to demonstrate that the trial court's finding was clearly against the preponderance of the evidence in this revocation proceeding.

Affirmed.

GRIFFEN and MARSHALL, JJ., agree.